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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Room TW A-325
Washington, DC 20554

Re: CC Docket Nos. 96-45; 96-98; 98-146; 98-147; 99-200; 99-217; 00-199; 01-92; 01-318; 01-321; 01-337; 01-338; 02-33; and 02-52

Dear Ms. Dortch:

On July 16, 2002, the enclosed document was provided to FCC staff. Would you please enter it into the record of the above referenced dockets.

Sincerely,

Toni R. Acton

Toni R. Acton

Enclosure

NARUC
Summer Meeting – July 2002
Portland, Oregon

TELECOMMUNICATIONS ISSUES BRIEFING BINDER

SBC

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NARUC Issue Briefing

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Broadband (FCC)

Background

The Federal Communications Commission (Commission) has initiated four different proceedings that will determine the regulatory framework for the nascent and intensely competitive broadband market. It is imperative that the Commission take decisive action to implement a uniform national broadband policy for all broadband providers, regardless of their technology or historical classification.

Regulatory Requirements for ILECs (Title II Proceeding)

On December 20, 2001, the Commission released a *Notice of Proposed Rulemaking* to examine how ILEC interstate broadband services should be regulated under Title II common carrier regulation. The Notice also seeks comment on SBC's petition to be declared non-dominant in its provision of broadband services. This proceeding is focused on whether the Commission should remove dominant carrier regulation (e.g. pricing and tariffing rules) that apply only to ILEC-provided broadband services.

Triennial UNE Review

On December 20, 2001, the Commission released a *Notice of Proposed Rulemaking* commencing its first Triennial Review of the Commission's unbundled network elements (UNEs) policies and rules. The Notice initiates a comprehensive evaluation of the Commission's unbundling rules to determine whether its regulatory framework for UNEs, as well as its specific unbundling requirements, are consistent with the objectives of the Act. An important issue in this proceeding is whether to extend unbundling requirements to new ILEC investment in broadband networks.

Framework for Broadband Access over Wireline Facilities (Title I Proceeding)

On February 15, 2002, the Commission released a *Notice of Proposed Rulemaking* to examine whether wireline telephone companies should continue to be required to offer the transmission component of their broadband Internet access services as a stand-alone telecommunications service. A key issue is whether wireline providers should have an obligation to open their networks to non-affiliated Internet Service Providers (ISPs).

Framework for Broadband Access over Cable

On March 15, 2002, the Commission released a *Declaratory Ruling and Notice of Proposed Rulemaking* in a proceeding that classified cable modem service as an interstate information service, with no separate telecommunications service offering. As in the Title I proceeding, a key issue in the Notice is whether cable providers should have an obligation to open their networks to non-affiliated ISPs.

Key positions

➢ Title II Proceeding - ILECs should not be subject to dominant carrier regulation — including burdensome pricing and tariff requirements — in their provision of packetized broadband services. The broadband market is intensely competitive and the ILECs are not the dominant providers of broadband services in either the mass-market or the business segment of the market. Cable providers are the undisputed dominant providers of broadband Internet access services to the mass market. IXCs are the undisputed dominant providers of broadband packetized services, such as ATM, Frame Relay, and Ethernet, in the business market.

➢ Triennial UNE Review - Extending unbundling requirements to new ILEC investment in broadband networks would distort competition and inhibit investment in broadband deployment. The result would be less competition and consumer choice in the broadband market. As the DC Circuit recently confirmed and the Commission has repeatedly recognized, the broadband market is intensely competitive and ILECs are not the dominant providers. Therefore, a requesting carrier cannot demonstrate that it is impaired without access to the ILECs' unbundled broadband facilities. Moreover, billions of dollars of risky investment is needed to deploy high-speed packet capabilities in the both interoffice and local loop parts of the ILEC network. Unbundling requirements would greatly increase ILEC infrastructure and operational costs and limit return on investment, thereby impeding their ability to compete with dominant cable providers.

➢ Title I Proceeding - Wireline providers must have the same flexibility as the cable providers do in designing and packaging broadband services for consumers and structuring arrangements with ISPs. Currently, ILECs are required to perform "radical surgery" on their broadband Internet access services and create stand-alone telecommunications services. This outdated requirement, which was adopted twenty years ago in a "one wire world," constrains the ILECs' ability to compete in offering new and innovative broadband services. Similar to cable, ILECs should have the flexibility to structure and package their broadband services and enter into market-based commercial arrangements with ISPs. Under no circumstances should the secondary market participants (ILECs) be subject to more stringent regulation than the market leaders (cable).

➢ Cable Proceeding - As a legal and policy matter, the Commission must apply the same ISP access requirement to competing and functionally equivalent cable and ILEC broadband Internet access services. There are no technical barriers to providing multiple ISP access to cable networks and there are no relevant technical differences in providing multiple ISP access to cable and ILEC broadband networks. The only issue is one of policy and cost. If the Commission determines that the costs of mandating multiple ISP access to cable broadband networks outweigh the benefits, then it must reach the same conclusion with respect to ILEC broadband networks.

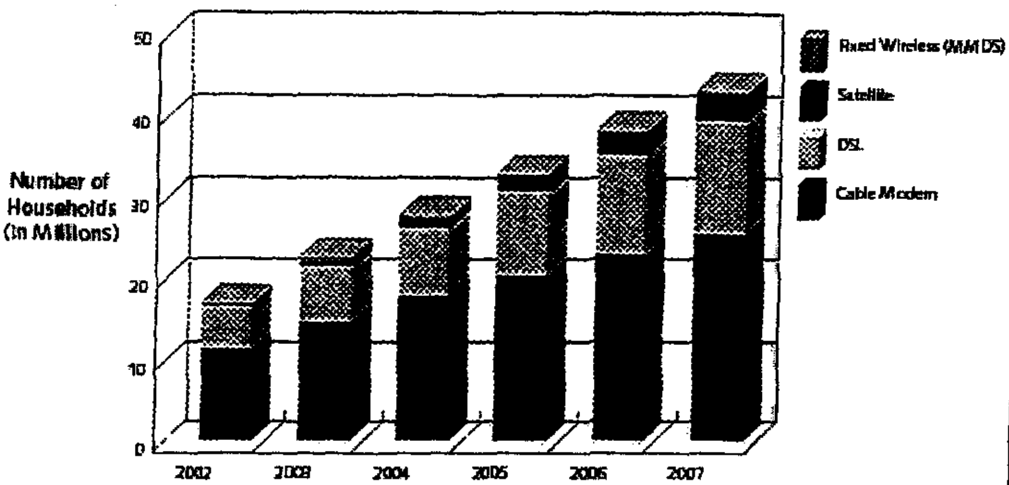
Rationale

➢ The broadband market is a highly competitive market with multiple broadband platforms and providers. DSL is being deployed to the mass market to provide a competitive alternative to cable modem services, which is wholly unregulated. The Commission has recognized that cable dominates this market and enjoys a 2:1 advantage over ILEC providers. Regulatory uncertainties are hampering ILECs ability to compete with cable providers. The Commission should act quickly to establish a national broadband policy that removes the regulatory disparity between cable modem and DSL service and that removes the regulatory uncertainty that currently chills investment in and deployment of new broadband technologies.

Supporting positions

"Throughout the brief history of the residential broadband business, cable modem service has been the most widely subscribed to technology, with industry analysts estimating that approximately 68% of residential broadband subscribers today use cable modem service. Analysts estimate that about 29% of residential broadband subscribers use DSL service. In the past year… cable's lead over DSL has grown." (FCC's *Cable Declaratory Ruling and NPRM*, March 15, 2002, paragraph 9)

Exhibit 1
Residential Broadband Subscriber Forecast
Source: the Yankee Group, 2002



	2002	2003	2004	2005	2006	2007
Fixed Wireless	45,000	66,000	120,000	177,000	246,000	308,000
Satellite	247,000	530,000	1,264,000	2,030,000	2,700,000	3,350,000
DSL	5,120,000	6,733,000	8,435,000	10,187,000	12,087,000	13,839,000
Cable Modem	10,607,000*	13,930,000*	16,907,000*	19,649,000*	21,975,000*	24,229,000*
Total	16,019,000	21,259,000	26,726,000	32,043,000	37,010,000	41,726,000

*Note: Cable modem numbers include businesses subscribing to residential class service.

"… the Yankee Group expects cable modem to continue as the dominant consumer broadband access platform for a number of years even beyond the forecast period. Regulators will also be a key factor in driving broadband availability and adoption as well as shaping or reshaping the high-speed access competitive landscape. As regulatory hurdles continue to affect [ILECs'] deployment of digital subscriber line (DSL) services ..., cable operators continue to ... widen their lead in the residential broadband race." (*Residential Broadband: Cable Modem Remains King*, Yankee Group, April 2002)

NARUC Issue Briefing

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Broadband (Congress)

Background

Federal regulations governing high-speed Internet access (or broadband) services are very different from provider to provider – cable companies and wireless providers face no regulations, while telephone companies are heavily regulated. The disparate regulatory treatment of these services harms consumers, contributing to higher prices, and in many cases denying them a choice of provider. Congress should direct the FCC to equalize the regulation of broadband service providers so consumers can obtain the benefits of free and open competition.

On February 27th, the House of Representatives overwhelmingly approved a measure to promote competition for high-speed Internet services by lifting regulations that prevent the nation's telephone companies from competing with cable companies. After a year of consideration, the House passed H.R. 1542 – the Internet Freedom and Broadband Deployment Act – by a vote of 273-157. As the bill moved to the Senate, supporters of H.R. 1542 were unable to overcome the opposition of Commerce Committee Chairman Ernest Hollings, who held one hearing on the bill in March.

In April, Senators John Breaux (D-LA) and Don Nickles (R-OK) introduced S. 2430, the "Broadband Regulatory Parity Act of 2002". The bill requires the FCC to issue regulations within 120 days that will subject all providers of broadband services to the same or no regulatory requirements. Under S. 2430, the FCC has exclusive regulatory jurisdiction over broadband and broadband access service, including the facilities and equipment used to provide these services. The bill does not affect ILEC obligations to provide services and unbundled network elements to other carriers for ***voice*** services.

Key positions

- Telephone-era regulations should not be imposed on the Internet, and S. 2430 is a step towards regulatory parity. SBC has already won long distance approval for five of its states, and remains committed to seeking 271 relief in all remaining states.
- Regulations should not discriminate against providers, nor should they favor one technology over another. The current imbalance in regulatory parity between phone companies and cable companies provides cable with an unfair advantage in the marketplace. Policymakers should apply like regulations to like services.
- Regulations imposed only on telephone companies limit competition, increase prices, and retard the development and rollout of new technologies, all to the detriment of consumers.
- Cable providers, which offer high-speed Internet access free from regulation, currently control about 70 percent of the high-speed Internet market.
- Unless SBC and other phone companies are allowed to compete on an equal footing with cable companies, cable will dominate the high-speed Internet market. Furthermore, cable companies offer service using a closed pipe that prevents consumer choice.

Rationale

➢ The Internet is too slow for too many people. Passage of Internet freedom legislation would promote the deployment of new high-speed Internet facilities and the construction of new Internet backbone facilities – thus fulfilling one of the major goals of the 1996 Telecom Act. It would make it easier for telephone companies to deploy high-speed Internet services in rural areas.

➢ The telecommunications and high-tech sectors have been the driving force in the U.S. economy over the past five years and their collapse has affected millions of workers and investors. Congress can give an immediate stimulus to the telecom and tech economy that won't cost the Treasury a dime – removing barriers to new investment that have prevented broadband from achieving its potential – by directing the FCC to adopt policies that will equalize the regulatory treatment of all broadband service providers.

➢ Of the 1.95 million layoffs last year, more than 317,000 were in the telecom industry; and that alarming trend has continued in 2002, with more than 135,000 job cuts through May.

➢ Allowing all broadband providers to compete under the same rules would bring broadband to millions of Americans – by removing the regulatory barriers that have slowed broadband roll out and prevented companies from investing in new networks. More broadband would have enormous economic effects: a study by a Brookings Institute economist concluded that adding more broadband connections could boost the U.S. economy by $500 billion per year.

Supporting positions

The Telecommunications Industry Association (TIA), the leading trade association in the communications and information technology industry, and several other major tech-related associations (the High Tech Broadband Coalition, TechNet and CSPP) have publicly called for regulatory parity among high-speed Internet access providers. The industry's leading unions – the Communications Workers of America (CWA) and the AFL-CIO – are also strong supporters of S. 2430 and efforts to allow all broadband providers to compete under the same rules.

The nation's major think tanks – the Alliance for Public Technology (which supports access for poor, disabled and rural consumers), the Progress and Freedom Foundation, and the Cato Institute – have all filed comments with the Bush Administration in support of a national broadband policy aimed at equalized regulations of broadband providers.

Other supporters of S. 2430 include: the Community Action Partnership, the National Black Chamber of Commerce, the E-Business Forum, the Electronic Industries Alliance, The National Grange, and the US Internet Industry Association.

NARUC Issue Briefing

National Association of Regulatory Utility Commissioners

UNE Activities

Background

On December 20, 2001, the FCC released a notice of proposed rulemaking commencing its first Triennial Review of the Commission's unbundled network elements (UNEs) policies and rules. The Notice initiates a comprehensive evaluation of the Commission's unbundling rules to determine whether its regulatory framework for UNEs, as well as its specific unbundling requirements, are consistent with the objectives of the Act. The Notice focuses in particular on the impact of the Commission's rules on facilities-based competition and deployment of advanced services. It seeks to draw on the lessons learned since the 1996 Act was passed, and to establish a more targeted approach to unbundling that identifies more precisely the needs of requesting carriers.

On May 13, the U.S. Supreme Court issued its long-awaited decision regarding the lawfulness of the TELRIC pricing methodology and of sections 315(c)-(f) of the FCC's rules, which address our obligations to perform the functions necessary to combine unbundled network elements. The United States Court of Appeals for the 8th Circuit had previously ruled that, although the 1996 did not preclude a UNE pricing methodology based on forward-looking, rather than historical, costs, TELRIC is unlawful insofar as it relies on the forward looking costs of a *hypothetical* competitor, as opposed to the ILECs' own forward looking costs. The 8th Circuit also invalidated sections 315(c) - (f) of the Commission's rules as being inconsistent with the '96 Act. The Supreme Court reversed the 8th Circuit on both issues. In upholding the TELRIC methodology for calculating UNE prices, the Court found that the FCC did not act unreasonably or outside its discretion when it established the TELRIC methodology. The Court did not rule, however, that TELRIC is legally mandated by the Act, or even that it is the best possible pricing policy. In addition, in upholding sections 315(c)-(f) of the Commission's rules, the Court held that they apply only when a requesting carrier is: (1) "unable to make the combination," or (2) "unaware that it needs to combine certain elements to provide a telecommunications service." The Court also emphasized that although an ILEC must "perform the functions necessary to combine" elements, it is not necessarily required "to complete the actual combination."

On May 24, 2002, the United States Court of Appeals for the D.C. Circuit remanded the Commission's order establishing a national UNE list and vacated and remanded the Commission's line-sharing order. Among other things, the order required the Commission to undertake an impairment analysis that was "more nuanced in light of the social costs of unbundling – specifically its negative effects on incentives to invest and innovate." The order goes on to direct the Commission to consider the inter-modal competition provided to wireline broadband by cable modem providers. Since the Commission is considering these issues in its Triennial UNE review docket, it solicited comments on the impact of this decision as part of that proceeding.

Key positions

➢ The Commission should not unbundle new investment.

➢ The Commission should not require ILECs to unbundle facilities for use in convergent competitive markets (e.g., advanced services, wireless and inter-exchange).

➢The Commission should not unbundle elements that are being competitively deployed today. Switching, particular, should not be unbundled.

Rationale

➢ Facilities-based local exchange competition has become a reality since the 96 Act.

➢ ILECs face competition from both CLECs and convergent technology platforms.

➢ Excessive unbundling inhibits facilities investment by ILECs as well as CLECs.

➢ The Commission must focus on what unbundling requirements are "necessary" and without which a CLEC would be "impaired."

Supporting positions

Corning, Alcatel, Progress & Freedom Foundation, Fiber to the Home Council, and the High Tech Broadband Coalition

"... the unbundling rules impose disincentives for both ILECs (who have to unbundle) and CLECs (who can gain by waiting for ILEC s to build facilities rather than building their own)." - Corning

"[Alcatel] is concerned that over-reliance on the ILECs' network elements retards sustainable competitive growth and precludes many of the benefits associated with facilities-based deployment, such as investment, innovation and redundancy." - Alcatel

SBC

Rights of Way (ROW)

Background

I-ROW (the Industry Rights-of-Way Working Group, comprised of ILECs, CLECs, IXCs) does not dispute that municipalities must manage use of their ROW to promote public benefits, such as public safety and delivery of needed services. I-ROW also recognizes that municipalities are entitled to recover appropriate costs for doing so. However, in some locations, the conditions imposed for access to public ROW — the fees imposed, and the time intervals for granting access — have led to significant new costs and substantial delays in advanced and competitive services deployment, up to and including abandonment of projects.

The National League of Cities, the Local and State Government Advisory Committee, the National Association of Telecommunications Officers and Advisors and the TeleCommunity Alliance argue for "fair rental value", while I-ROW argues for recovery of only direct costs and time limitations to approve applications. In most states, including most of the SBC states, subject to police powers of the local government to manage physical intrusions to ROWs, telecommunications companies have the right to use public ROWs without having to seek a franchise from the local jurisdiction or payment of fees in excess of costs.

Because the 1996 Telecom Act's rights-of-way provisions have been subject to varying interpretations and because existing state laws vary, these issues have been raised before state and federal legislators, courts, federal agencies, NARUC and NTIA.

Key positions

- Fees charged for public ROW access should reflect *only* actual and direct costs.
- Access requests should be acted upon in a fixed and reasonable period of time.
- ROW management should not create a "third tier" of regulation of telecommunications companies (e.g. municipalities seeking information or oversight regarding companies profitability or authority to serve).

Rationale

- Excessive fees are a barrier to entry in conflict with §253 of the 1996 Act..
- Local government hold ROWs in their governmental capacity for which they are NOT entitled to fees in excess of costs (overwhelming legal precedent demonstrates that municipalities do not have a traditional property interest in ROW akin to that of a private landlord).
- Extensive delay can 1) be used as leverage to obtain agreement to unreasonable fees or conditions; 2) result in companies being in default of loan conditions; or 3) impact other communities.
- Duplication of State and Federal Commission functions is unnecessary and inappropriate.
- Cities benefit from access to the latest telecommunications services and facilities and competition in the telecommunications industry increases access to those services and facilities. Excessive fees imposed for the use of the ROW will increase the cost of telecommunications services that might otherwise be lowered by competition.

Supporting positions

TechNet, FCC's 706 Report, NTIA's Nancy Victory, Michigan Governor John Engler and NARUC

"TechNet encourages the adoption of legislation at both the federal and state levels to make clear the ability of broadband providers to access public rights of way without discrimination, excessive regulation and exorbitant fees." - *TechNet*

"So I encourage state and local governments to continue to work with NTIA, the FCC, and industry stakeholders to overcome the challenges to removing any unnecessary deployment obstacles that rights-of-way and tower siting regulations may impose."- *NTIA's Nancy Victory*

"NARUC supports the vigorous enforcement of existing access laws by local governments, State Commissions, the FCC and other federal agencies, as well as the adoption of right-of-way access laws where none exist, and the review or reform of existing local, State and federal measures to ensure that rights-of-way access is eliminated as an actual or potential barrier to deployment." - *NARUC Resolution*

SBC

Intercarrier Compensation

Background

On April 27, 2001, the FCC initiated a new rulemaking proceeding to consider a unified intercarrier compensation regime for the flow of payments among telecommunications carriers. The FCC is specifically seeking comment on the feasibility of a bill-and-keep approach for ISP-bound traffic, for reciprocal compensation payments governed by Section 251, and for interstate access charges.

Three transition plans (CALLS, Reciprocal Compensation, CLEC Access Charges) are currently in place - therefore, major changes to access rules are not assumed to begin until 2005. Interconnection issues are likely to be addressed in the near term.

The RBOCs support reevaluating existing intercarrier compensation mechanisms and overall support for bill-and-keep as the long-term solution. Wireless carriers supported bill-and-keep for LEC-CMRS interconnection, urging the FCC to create federal uniform LEC-CMRS interconnection rules immediately.

Key positions

➢ Before the Commission can implement a bill-and-keep regime for access charges, it must tackle the difficult issues of implicit subsidies and universal service reform through residential price increases and an affordability-based universal service funding mechanism.

➢ The FCC should adopt a bill-and-keep regime that applies to the exchange of all telecommunications traffic between a LEC network and another carrier's network, including Internet, local and wireless traffic.

➢ End-user recover mechanisms must be established and ILECs should be granted pricing flexibility to respond to market forces.

Rationale

➢ A bill-and-keep system provides significant benefits:

- It promotes efficient competition by requiring each carrier to recover its network investment decisions from its end users.
- Eliminates significant reciprocal compensation payments and similar settlement payments.
- Increases residential local service profitability through rational pricing.
- Promotes revenue retention.

SBC

Tenth Circuit Remand of the Universal Service High Cost Support Mechanism

Background

SBC provides service in many rural, high-cost areas but does not receive any high cost support from the federal fund. SBC must therefore support these high-cost areas with implicit subsidies derived from its profitable business customers. However, because competitors actively target SBC's profitable customers, these sources of implicit support are rapidly eroding.

Significant reform of the high-cost support mechanism is needed, and an opportunity for such reform was created by the Tenth Circuit's remand of the FCC's order establishing the high-cost support mechanism:

- In particular, the Court held that it was impossible to determine whether the FCC's model satisfied the requirements of the Act until the FCC divulged its comprehensive plan for implementing universal service.
- As part of this plan, the Court held that the Commission must induce state cooperation in implementing Section 254 of the Act.

Though the NPRM suggests - and some commenters agree - that the scope of the Court's remand is narrow, such a view ignores significant problems with the current high-cost support mechanism:

- The current system relies heavily on implicit subsidies as a primary source of support.
- The Commission has never addressed the statutory requirement that rates be "just, reasonable, and affordable."

Key positions

➢ The scope of the Court's remand is extremely broad. It is not limited to merely providing clearer statutory definitions or providing better post-hoc justifications for an arbitrary benchmark. It requires the Commission to establish inducements for state cooperation to implement Section 254 of the Act.

➢ The Commission should initiate a comprehensive proceeding to reform the high-cost support mechanism.

➢ The FCC must end its reliance on eroding implicit subsidies as the primary source of universal service support. Though the Commission anticipated the erosion of implicit support as a necessary consequence of increased competition, no action has been taken to replace that support.

➢ SBC proposed a three-step approach to a *national* plan for reforming universal service: The Commission should:

- Establish an affordability benchmark based on median household income.
- Establish a universal service mechanism that provides funding for all areas where the forward-looking costs exceeds the affordability benchmark.
- Establish a transition plan that allows residential local rates to rise to levels that are self-supporting and affordable.

➢ Not only is the "affordability" of rates mandated by the Act, it is also a required first step for determining the degree to which prices must be supported. Only when the Commission determines the degree to which prices must be supported can the Commission determine the appropriate size of the fund.

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SBC

Winback and Retention Promotional Offers

Background

With the advent of increased competition in the telecommunications industry, competitor offerings of attractive pricing offers and new service and package offerings have been on the rise. One byproduct of this growing competition has been a large volume and variety of promotional offers by telecom providers providing temporary price incentives for different products and for different customer market segments. Two such examples of promotional offerings have been "winback" and "retention" types of offers. These types of offers have resulted in a great deal of controversy between competitors as well as complaints and proceedings in various states across the country.

"Winback" promotion refers to a promotional offer targeted to a particular customer segment made up of former customers of a provider, which the provider is attempting to win back. "Retention" promotion refers to an offer targeted to a customer segment that is under a current or eminent threat of leaving for a competitor.

Key positions

➢ SBC opposes any restrictions on "winback" or "retention" offers, including imposition of a wait period before the company can contact former customers or arbitrary additional restrictions on the pricing of its services beyond those already in place pursuant to current regulation.

➢ Winback and retention promotions are not unreasonably discriminatory. Winback and retention promotions are appropriate responses to competitors' activity and customer choice in a competitive marketplace. These offers are driven by a rational and reasonable business purpose intended to meet or beat the competition not by any intent to discriminate between customers. This is the nature of competition. The combination of competitors' behavior and consumer choice therefore determines the availability of SBC's winback and retention offers, not discrimination by SBC.

➢ Winback offers are completely consistent with competition and are good for customers. A primary goal of the Telecommunications Act of 1996 was to reduce regulation and to promote competition of both local and long distance telecommunications. Many states also have similar goals embodied in state laws or regulation. The type of competition for consumers via winback and retention promotions is a direct byproduct of such goals and corresponding policies and should be encouraged. Winback and retention offers increase diversity of supply options, lower prices, and consumer choice.

➢ There is no proof that winback offers are "predatory" or priced below costs. SBC complies with existing state and federal above-cost pricing requirements, such as pricing above long run incremental cost (LRIC). These types of existing pricing vs. cost requirements prevent predatory pricing while ensuring economic efficiency.

- Winback offers are made available to CLECs for resale at discounted wholesale rates. In accordance with the '96 Act and implementing FCC Orders, SBC offers all retail promotional offers (including winback and retention) that are longer than 90 days for resale at discounted wholesale rates.
- Imposition of a waiting period to contact a lost customer is inappropriate. Imposing a wait period is a violation of commercial free speech guaranteed under First Amendment rights. A waiting period would also leave a customer who is unsatisfied with another carriers' service fewer opportunities to change service. A waiting period will also impact the ability to detect slamming, which is often discovered on initial customer contact verifying that they changed providers.
- Additional regulation: Notwithstanding SBC's position recommending no additional regulation, any winback or retention rules imposed by regulators should be imposed equally to all providers/competitors. The regulatory environment should not pick winners and losers nor insulate any provider from competition.

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Accounting Reform

Background

In the pending Phase 3 rulemaking, the FCC should sunset all of its accounting rules in three years, and remove some of them immediately, at least for price cap carriers. The FCC's dependence on accounting has been drastically reduced by price caps and TELRIC. The Part 32 listing of accounts provides sufficient uniformity for comparing dominant carriers. The other FCC accounting rules are either redundant with GAAP, at odds with GAAP, or are unnecessarily restrictive and static.

Enforcement of GAAP is receiving heightened attention after the recent WorldCom and Enron investigations. However, GAAP itself is not under siege. Expect tighter auditing standards, closer auditor scrutiny and reduced conflicts of interest in the accounting industry. GAAP, assuming it is not brazenly violated, is sufficient for all accounting and reporting purposes.

The FCC should concentrate on regulating communications practices, which are just as critical to the nation's economy as accounting. The FCC should not be diverted from its main mission by continuing to closely regulate accounting practices. The Phase 2 Biennial Review Order created certain unwarranted new requirements that should be reconsidered.

Key positions

In the pending Phase 3 rulemaking, the FCC should immediately eliminate its rules on CPR, Depreciation, Capitalization, Materiality and ARMIS, which no longer serve a purpose with regard to price cap carriers. Certain requirements included in the Phase 2 Biennial Review Order should be reconsidered:

- New wholesale and retail sub-accounts are unwarranted and unreasonable.
- ILECs should not be required to publicly report sensitive broadband data.
- ILECs should not be required to report sub-loop cable statistics.
- The companies that are required to follow the FCC's accounting rules should be more correctly defined as those carriers that are dominant in their markets, not simply all ILECs.

Rationale

- Phase 3: GAAP is sufficient for all accounting and reporting purposes. The FCC should withdraw from the regulation of accounting practices. Rates are no longer set by costs for carriers under price caps. Elimination of the accounting rules will have little, if any direct impact on reported results. The FCC recognizes that "any unnecessary regulation places a corresponding unnecessary burden on carriers that are subject to it."
- Phase 2: New accounting requirements, without a clear need in the federal jurisdiction, make no sense at the same time when the FCC questions the very value of regulating through accounting. The new broadband reporting requirements will be costly to implement, and will inject new asymmetrical regulation into a growing competitive market.
- Sub-loop cable statistics are not maintained by carriers and would be costly and difficult to obtain.

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National Performance Measures - UNEs

Background

The focus of this proceeding must be on streamlining, not expanding, the number of measures and sub-measures in place today. The FCC recognizes the need to "rationalize divergent federal and state requirements in an efficient way, thus serving a deregulatory purpose while advancing the pro-competitive scheme of the Telecom Act." ILECs are currently required to produce thousands of pages of performance reports each month consisting of millions of data points. The scope and number of measurements are markedly different between the various regions. Performance measurements for UNEs have become an excessive "regulatory patchwork."

The FCC has the opportunity in this docket to determine the uniform core set of essential UNE performance measures (PMs) and should use the opportunity to replace all existing PM categories after 271 approval in a given state. The core measures will also serve as a basis for negotiated PMs in new interconnection agreements, after existing ones expire.

Standards of performance must vary with conditions in each state, and remedies for missing performance requirement must be left to business-to-business negotiations.

Key positions

- Any measures adopted by the FCC must supplant all existing state measures after 271 approval in a given state.
- PMs in existing interconnection agreements remain in effect for the term of the agreement, unless the parties exercise any change of law provision therein.
- Submeasures and disaggregations of measurement categories must be rationally limited.
- No "one-size-fits-all" national performance objectives (benchmarks and standards).
- No regulator-imposed liquidated damages (remedy penalties).

Rationale

- If the FCC determines that a core set of measures are the ones that are essential to further promote facilities-based competition, it must necessarily also conclude that any other measures would be excessive and burdensome.
- The rights and obligations of ILECs and CLECs should continue to be governed by existing negotiated interconnection agreements.
- While the FCC can bring rationality by determining which activities are essential to be measured, it cannot determine what performance levels are reasonable on a nationwide basis because conditions vary from state to state.
- Neither federal nor state regulators have the authority to establish liquidated damages. Only parties to an agreement may voluntarily agree on damages. Regulators cannot violate due process by subjecting ILECs to automatic forfeitures for missing performance standards.

SBC

National Performance Measures - Special Access

Background

Special Access performance measures are unnecessary because the market is competitive and market remedies for service quality are sufficient. Advocates of uniform, national performance requirements for special access have failed to demonstrate that service quality is a national problem requiring a regulatory solution.

Key positions

- Any national measures or standards should apply to all providers of special access.

Rationale

- In many areas, SBC's share of the special access market is less than 50 percent.
- Special access customers, including its largest customers, regularly have pointed to the availability of alternative sources of special access in negotiations.
- Competitive pressure in high density markets requires SBC to provide high quality services in other areas where competitors may not yet have deployed facilities because SBC's service plans and guarantees apply across a given state or region.
- Competitive pressures have required SBC to implement service quality improvement plans, which include performance reporting, service quality guarantees, regular and frequent service meetings with customers, and service remedies for all types of special access across its region.
- The Commission can not reasonably adopt national measures based solely on anecdotal evidence regarding purported service quality problems involving, at most, a handful of carriers.
- Before taking any action, the Commission must first require all providers of special access to provide detailed information concerning the availability of alternative sources of special access, and their service quality. Only then could the agency determine whether there is, in fact, a national problem in need of a national solution, and what, if any, action is appropriate.
- Only by applying measures and standards to all providers would the Commission ensure that CLEC demands for increased regulation are reasonable and avoid upsetting competition in the marketplace.